

March 29, 2017

**By ECF and Email**

The Honorable Richard J. Sullivan  
U.S. District Court for the Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007  
sullivannsdchambers@nysd.uscourts.gov

Re: *In re Welspan Litigation*, Case No. 16 Civ. 6792 (RJS) (DCF)

Dear Judge Sullivan:

The undersigned counsel for Plaintiffs Harold Brower, Judi Talili, Samuel Jividen, and Ashley Mistler (“Plaintiffs”) and Defendants Welspan USA, Inc. (“WUSA”), Bed Bath and Beyond, Inc., Target Corporation, and Wal-Mart Stores, Inc. (together with Plaintiffs, the “Parties”) submit this Joint Status Letter to provide the Court with a case status update pursuant to Your Honor’s Order of Consolidation and Setting Brief Schedule, dated December 12, 2016. (Dkt. No. 30.) In that Order, Your Honor instructed that the update should include (1) a brief description of all outstanding motions and/or outstanding requests to file motions; (2) a brief description of any discovery that has already taken place, and that which will be necessary for the parties to engage in meaningful settlement negotiations; (3) a list of all prior settlement discussions, if any, including the date, the parties involved, and the approximate duration of such discussions; and (4) any other information that may assist the Court in resolving this action. Below is a response to each requested category.

First, pending before Your Honor is Plaintiffs’ letter filed March 16, 2017, seeking a pre-motion conference regarding their proposed motion for an order authorizing alternative service on Welspan India Ltd. under Federal Rule of Civil Procedure 4(f)(3). (Dkt. No. 79.) WUSA submitted a response letter on March 21, 2017, requesting that Your Honor deny Plaintiff’s request for a pre-motion conference. (Dkt. No. 84.) No other motions or requests to file motions are outstanding before the Court.

Second, Plaintiffs served their First Set of Requests for Production of Documents to WUSA on March 9, 2017, and their Amended First Set of Requests for Production of Documents to WUSA on March 10, 2017. Plaintiffs served their First Sets of Requests for Production of Documents to Wal-Mart Stores, Inc., Bed Bath and Beyond, Inc., and Target Corporation on March 28, 2017. WUSA plans to serve its First Set of Requests for Production of Documents to Plaintiffs shortly and in no event later than April 7, 2017. As contemplated in the Proposed Case Management and Scheduling Order attached as Exhibit A to this letter, the intent of these requests is to discover information relevant to Plaintiffs’ alleged damages in anticipation of early mediation. The Parties’ proposed schedule contemplates that all discovery for mediation will be completed by June 9, 2017.

Third, on February 9, 2017, Plaintiffs and WUSA met and conferred regarding the possibility of early resolution of this case and corresponding process and schedule. In particular, Plaintiffs and WUSA agreed to propose to the Court that they engage in a period of discovery regarding damages, followed by mediation, before the Court set any other case deadlines, including the deadline to answer or otherwise respond to Plaintiffs' Consolidated Amended Complaint. On February 10, 2017, Plaintiffs and WUSA held a telephone conference with Judge Freeman and discussed their proposed schedule. The Parties subsequently elected to proceed with private mediation and have retained Stephen M. Orlofsky, former U.S. District Court Judge for the District of New Jersey, to serve as the mediator in this dispute. Judge Orlofsky has set mediation for July 6, 2017. As described above, document discovery is already underway for this private mediation.

Fourth, pursuant to the Court's Order of Consolidation and Setting Brief Schedule, the Parties are simultaneously submitting a Proposed Case Management and Scheduling Order with this letter (enclosed as Exhibit A), which memorializes the Parties' intent to engage in private mediation and proceed upon the schedule detailed therein.

We appreciate the Court's consideration of these issues and are available to discuss or to submit further information at the Court's convenience.

Respectfully submitted,

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cc: All counsel of record (via ECF)